

Agency 45

Kansas Parole Board

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Article 1.—MEANING OF TERMS

45-1-1. (Authorized by K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

Article 2.—GOOD TIME CREDITS

45-2-1 to 45-2-6. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 3.—PAROLE ELIGIBILITY

45-3-1 and 45-3-2. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective,

E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 4.—PAROLE HEARINGS

45-4-1 to 45-4-3. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-4. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-4-5 and 45-4-6. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-4-7. (Authorized by and implementing K.S.A. 1986 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; amended May 1, 1988; revoked Nov. 22, 2002.)

45-4-8. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-9. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-4-10. (Authorized by K.S.A. 22-3717; implementing K.S.A. 22-3706; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-11. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

45-4-12. (Authorized by K.S.A. 1984 Supp. 22-3717; implementing K.S.A. 22-3719; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 5.—INITIAL HEARINGS

45-5-1. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 6.—DOCKETS

45-6-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-2 and 45-6-3. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-4. (Authorized by K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; revoked May 1, 1986.)

45-6-5. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-6. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; revoked May 1, 1986.)

Article 7.—PAROLE RELEASE

45-7-1. (Authorized by and implementing K.S.A. 1986 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked Nov. 22, 2002.)

45-7-2. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-7-3. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-7-4 and 45-7-5. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; effective May 1, 1986; revoked Nov. 22, 2002.)

Article 8.—PAROLE ELIGIBILITY; IN ABSENTIA

45-8-1. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1986.)

Article 9.—PAROLE VIOLATORS

45-9-1. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1,

1988; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-2. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective May 1, 1986; amended May 1, 1987; amended, T-45-8-29-97, Aug. 29, 1997; amended Feb. 20, 1998; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-3. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective May 1, 1986; amended May 1, 1987; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-4. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20 and K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective, T-45-7-8-99, July 8, 1999; effective Nov. 5, 1999; revoked Nov. 22, 2002.)

Article 10.—CONDITIONAL RELEASE

45-10-1. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

Article 11.—DISCHARGE

45-11-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

Article 12.—EXPUNGEMENT

45-12-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 13.—GOOD TIME CREDITS; COMPUTATION TABLE

45-13-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 14.—EXECUTIVE CLEMENCY

45-14-1. (Authorized by K.S.A. 22-3701; and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

Article 15.—APPLICATION

45-15-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 16.—ORDERS OF RESTITUTION

45-16-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1987.)

45-16-2. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-16-3. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1986; revoked Nov. 22, 2002.)

45-16-4. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1986; revoked Nov. 22, 2002.)

Article 100.—MEANING OF TERMS

45-100-1. Definitions. (a) “Board” means the Kansas parole board established by K.S.A. 22-3707 and amendments thereto.

(b) “Conditional release,” for offenders serving indeterminate sentences for offenses committed before July 1, 1993, means release subject to supervision under terms and conditions determined by the board after serving the maximum sentence less all projected good time credits, subject to adjustment for any forfeiture of good time credits.

(c) “Correctional facility” means any of the fa-

cilities identified in K.S.A. 75-5202 and amendments thereto.

(d) "Docket" means the board's prearranged schedule of hearings.

(e) "Executive clemency" means the power of the governor to commute or pardon a criminal sentence.

(1) "Commute a criminal sentence" means to reduce the penalty imposed on a convicted person.

(2) "Pardon" means to forgive completely the punishment of a person convicted of a crime.

(f) "Good time credits" means the statutorily authorized reduction in time on an inmate's sentence as specified by K.S.A. 21-4706, K.S.A. 21-4722, and K.S.A. 22-3717, and amendments thereto, and department of corrections regulations.

(g) "In absentia" means a status in which an inmate is committed to the custody of the secretary of corrections and is serving the sentence out of state or in another jurisdiction.

(h) "Parole" means, for crimes committed before July 1, 1993, the release of an inmate to the community by the Kansas parole board before the expiration of the inmate's sentence, subject to conditions imposed by the board and administered under the secretary of correction's supervision.

(i) "Parole officer" means a full-time, salaried officer or employee under the jurisdiction of the secretary of corrections whose duties include the following:

(1) Investigating, supervising, arresting, and controlling persons on parole or postrelease supervision and enforcing the conditions of parole or postrelease supervision; and

(2) providing services that relate to probationers, parolees, or persons on postrelease supervision and that are required by the uniform act for out-of-state parolee supervision.

(j) "Postrelease supervision" means, for crimes committed on or after July 1, 1993, the release of an inmate, subject to conditions imposed by the Kansas parole board, to the secretary of correction's supervision and to the community after the inmate has served a period of imprisonment or after the inmate has served equivalent time in a facility where credit for time served is awarded as set forth by the court.

(k) "Public comment session" means the board's regular, scheduled meeting with interested parties in the community for the purpose of

receiving comments concerning the publicly announced listing of persons to be considered for parole by the board.

(l) "Secretary" means the secretary of corrections.

(m) "Unit team" means the group of correctional facility staff that is responsible for monitoring the overall management, supervision, custody, and rehabilitation plan of an inmate, as initiated by the classification committee, and that recommends custody changes and prepares progress summaries.

(n) "Warden" means the person in charge of the operation and supervision of a correctional facility. (Authorized by and implementing K.S.A. 2001 Supp. 22-3701 and 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 200.—PAROLE HEARING PROCEEDINGS

45-200-1. Attendance at hearings. (a) Except as provided in subsection (b), attendance at any parole hearing held at a correctional institution shall be limited to the following:

- (1) Any individual who is on the board's staff;
- (2) the inmate;
- (3) the person responsible for coordination of the parole plan for that inmate;
- (4) a representative of the inmate's unit team or another designated institution staff member;
- (5) any additional employee of the department of corrections who wishes to attend the hearing and who receives prior approval from the board; and

(6) if the parole applicant does not offer an objection, a limited number of persons who have a professional interest in parole procedures and who have received prior approval from the board.

(b) Any individual who is authorized to attend a parole hearing under subsection (a) may be denied access to the meeting if the board determines that attendance by that individual is not in the interest of the state. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-200-2. Single board member hearings; review and appeals. (a) If a single board member conducts a parole hearing, the findings of that member shall be reviewed and approved in accordance with K.S.A. 22-3709, and amendments thereto, before the findings and decision

become final. If there is a disagreement between the member who conducted the hearing and the member who reviewed the findings, the decision shall be submitted for review by another board member. The presence of the inmate shall not be required at either of these reviews.

(b) A request to reconsider a board decision shall be granted only on the basis that the inmate has new information that was unavailable at the prior hearing. Each request for reconsideration shall be made to the board in writing and shall detail the new evidence that was unavailable at the prior hearing. The presence of the inmate shall not be required when the matter is reconsidered.

(c) An inmate who is appealing a sentence or conviction shall not be adversely affected in the parole process or deliberations. However, the parole hearing may be continued by the board for a reasonable time for the purpose of clarifying the status of the appeal to make certain that the board is considering the applicant's parole suitability with respect to the proper sentence. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; implementing K.S.A. 2001 Supp. 22-3709 and 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 300.—DOCKETS

45-300-1. Docketing regular parole hearings. (a) Each case shall be docketed by the board for a regular parole hearing when all of the following prerequisites have been met:

(1) The inmate has achieved parole eligibility status under the requirements of K.S.A. 21-4608 and K.S.A. 22-3717, and amendments thereto, and department of corrections regulations.

(2) The preparole investigation has been completed.

(3) During the month preceding the proposed docketing of the parole hearing, a public comment session has been conducted by the board.

(b) If an offender has achieved parole eligibility status but has not been placed on the docket for a public comment session, the parole hearing may be conducted by the board if the decision is deferred until the public comment session has been held. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-300-2. Absence of inmate at docketed hearing. If an inmate is unable to appear for a scheduled hearing due to a physical or men-

tal condition, absence from the facility, in absentia status, or other reasons, the inmate's hearing shall be rescheduled for the next regularly scheduled hearing date at that facility after the inmate becomes available, unless otherwise ordered by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 400.—RELEASE TO SUPERVISION

45-400-1. General provisions. (a) Following each parole hearing, the parole board's findings and recommendations shall be prepared in writing. These findings and recommendations shall be used to prepare a final action notice. Appropriate department of corrections personnel shall be provided with copies of the final action notice. The final action notice shall not be divulged to any other party until notice of the board's action has been sent to the inmate.

(b) The release condition or conditions established by the board, if any, shall not be modified or waived except by order of the board.

(c) If the board needs additional information after the parole hearing concerning the inmate or the inmate's parole plan, the decision on the inmate's parole hearing may be delayed for a reasonable length of time so the necessary information can be obtained.

(d) Each inmate who is on postrelease supervision or parole shall remain in the legal custody of the secretary of corrections and subject to orders of the secretary. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-2. Parole plan. Each inmate who has been granted parole subject to an approved parole plan shall remain in confinement until the board or its designee approves a satisfactory parole plan. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-3. Release. (a) Release dates.

(1) Any inmate who has been granted parole and has been assigned to a specific parole office may receive a release date when placement arrangements are completed and approved.

(2) A specific release date may be designated by the board in order to comply with statutory parole eligibility or for any other special cause as

determined on a case-by-case basis. Requests for advance release may be considered by the board for valid reasons, subject to investigation and confirmation by proper authorities.

(3) If an inmate's release date falls on a Saturday or Sunday, or on a holiday observed by the department of corrections, the inmate may be released on the last workday before the computed release date.

(b) Interstate compact release. Each inmate who has been granted parole for out-of-state supervision under an interstate compact agreement shall remain in confinement until the receiving state has entered its report with the compact administrator of the secretary, who shall refer it to the board for final determination and authorization of release. If the interstate compact agreement is disapproved, the decision to parole the inmate under the compact agreement shall be deemed void. A notice shall then be issued by the board advising the inmate that the interstate compact agreement has been disapproved and the inmate's parole suitability will be reconsidered at a scheduled parole hearing.

(c) Changes in parole plan. Each inmate who is on continued status and who elects to change the parole plan shall present this information to the unit team, which shall forward it to the board for its approval and advice.

(d) Release to detainer.

(1) Each inmate who has been granted parole to a detainer only shall remain in confinement until sufficient arrangements have been made to determine when the detaining authority will assume custody.

(2) Unless otherwise ordered by the board, a decision to parole an inmate to a detainer only shall be deemed void if the detainer is thereafter cancelled. A notice to the inmate shall be issued by the board stating that the detainer has been cancelled and the inmate's parole suitability will be reconsidered at a scheduled parole hearing. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-4. Deferred release. (a) The release of any inmate who has been granted parole may be deferred or the parole may be rescinded on the basis of any one or more of the following factors:

(1) Department of corrections staff finds that there is probable cause to believe that the inmate

committed a facility infraction before being released.

(2) The parole plan does not provide for sufficient supervision or does not adequately provide for public safety or for the successful integration of the inmate.

(3) Information that was not available at the hearing indicates that the inmate cannot reasonably lead a law-abiding life.

(b) If the board so orders, the inmate shall not be released until the facility's fact-finding or disciplinary process is completed and the board is provided copies of the findings and recommendations. The report may contain a recommendation to the board concerning the inmate's parole status.

(c) If probable cause is found to believe that an inmate committed a facility infraction before being released, the board's decision to reconsider the inmate's parole suitability may also take into account the following factors:

(1) The date of the alleged infraction;

(2) the nature of the alleged violation charged and its penalty classification; and

(3) the facility's report containing recommendations concerning the inmate's parole status.

(d) If the board is considering whether or not to rescind a decision to grant an inmate's parole, defer the inmate's established release date, or both, the inmate shall be provided with the following by the board:

(1) A special hearing before the board or one or more of its members;

(2) written notice, at least 24 hours before the hearing, of the purpose of the hearing and the grounds upon which the board is considering the proposed action;

(3) an opportunity for each of the following:

(A) To appear;

(B) to respond to the allegations which are the basis for the board's proposed action.

(e) Following the special hearing, a written statement of the board's order, including the reasons for its determination, shall be issued by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 500.—PAROLE VIOLATORS

45-500-1. General provisions. Each offender who is returned on a violator warrant issued by the secretary of corrections shall be

brought before the board as soon as practical for a final revocation hearing, unless the offender is eligible for and chooses to waive the right to the hearing as provided in K.A.R. 45-500-4. At any time before a final revocation hearing is held under K.A.R. 45-500-2, the warrant may be withdrawn at the request of the secretary of corrections, and the offender may be rereleased on parole, conditional release, or postrelease supervision. At that time, new conditions may be established, or the conditions of parole, conditional release, or postrelease supervision may be modified by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002.)

45-500-2. Final revocation hearings. (a) After an offender is returned to a correctional facility under K.A.R. 45-500-1, the offender may request a hearing before the final decision on revocation by the board. Any offender on postrelease supervision may waive the final revocation hearing as provided in K.A.R. 45-500-4. The final revocation hearing shall be held without unnecessary delay and shall be conducted by the board or any member of the board. After considering all pertinent evidence, an appropriate order shall be entered by the board. If the violation is established to the satisfaction of the board, the parole or conditional release may be reinstated or revoked by the board.

(b) Before the final revocation hearing, the following information shall be provided to the offender by the board:

(1) Written notice of the alleged violations of the conditions of release; and

(2) the evidence against the offender. If the board finds that there are additional violations other than those contained in the written notice, the hearing shall be continued so that a written notice of the additional violations and a statement of the evidence against the offender can be prepared.

(c) Each offender shall have the right to confront and cross-examine adverse witnesses, unless the board finds good cause for not allowing confrontation. If the board does not allow the offender to confront a witness, the evidence relied upon and the reasons for this determination shall be specified by the board. If the offender had the opportunity to cross-examine a witness at the probable cause hearing provided in K.A.R. 44-9-

105, the record may be relied upon by the board, in lieu of calling that witness.

(d) The offender shall have an opportunity to be heard in person and to present documentary evidence and witnesses who can provide information relevant to the allegations of the violation of the conditions of release. The attendance of witnesses favorable to the offender shall be the responsibility of the offender and shall be at the offender's expense. The hearing may be continued to allow for the attendance of witnesses.

(e) All relevant evidence, including letters and affidavits, shall be received by the board. If the violation of the conditions of release results from a conviction for a new felony or misdemeanor, the only question considered by the board shall be whether or not the new conviction warrants revocation.

(f) Each offender shall be entitled to have legal counsel present at the hearing, at the offender's expense.

(1) Legal counsel may be appointed by the board upon the request of the inmate or on the board's own motion. The appointment of legal counsel shall be based upon either of the following claims by the offender, which shall be timely and colorable:

(A) A claim that the offender has not committed the alleged violation of the conditions of release; or

(B) a claim that there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.

The board's decision regarding the appointment of counsel shall take into account whether or not the offender is capable of speaking effectively for that individual and whether or not the circumstances are complex or otherwise difficult to develop or present.

(2) In all cases in which a request for appointed counsel at a preliminary hearing or final revocation hearing is denied, the grounds for denial shall be stated in writing.

(g) If the offender's release is revoked, a written statement as to the evidence relied upon and reasons for revoking the release shall be given to the offender by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002.)

45-500-3. Computation of time. (a)(1) Any offender whose parole has been revoked may

be required by the board to serve all or any part of the remaining time on the sentence up to the original conditional release date, plus all good time forfeited by the board.

(2) Any offender whose conditional release has been revoked may be required by the board to serve all or any part of the remaining time on the sentence.

(3) Each offender whose postrelease supervision has been revoked for reasons other than conviction of a new crime shall serve a six-month period of confinement beginning on the date of the final revocation hearing or the effective date of the waiver of the final revocation hearing under K.A.R. 45-500-4. The six-month period of confinement may be reduced by not more than three months based on the offender's conduct, work, and program participation during this incarceration period, in accordance with regulations adopted by the secretary of corrections.

(4) Each parole violator with a new conviction and sentence shall achieve parole eligibility on the new sentence or sentences as determined by K.S.A. 22-3717 and K.S.A. 21-4608, and amendments thereto, and in accordance with regulations adopted by the secretary of corrections.

(5) Each postrelease violator whose postrelease supervision has been revoked due to conviction of a new crime shall serve one of the following periods of time:

(A) If the new crime is a felony, a period of confinement equal to the entire remaining balance of postrelease supervision; or

(B) if the new crime is a misdemeanor, a period of confinement to be determined by the board, which shall not exceed the entire remaining balance of the period of postrelease supervision.

(b) Good time credits earned while on parole, before the parole revocation date, may be forfeited upon order of the board. Upon order of the board, the good time credits earned while on post-release supervision may likewise be forfeited, before the postrelease supervision revocation date or the effective date of the waiver of the final revocation hearing.

(c) If the secretary has issued a warrant for the return of a released offender and it is determined that the warrant cannot be served, the released offender shall be deemed to be a fugitive from justice. If it appears that this fugitive has violated provisions of release, the time from the violation of the provision to the date of arrest, as determined by the department of corrections, shall not

be counted as time served under the sentence unless approved by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002.)

45-500-4. Waiver of final revocation hearing. (a)(1) For purposes of this regulation, "misdemeanor" means a class A, B, or C misdemeanor or a criminal charge of an equivalent class under a city ordinance.

(2) For purposes of this regulation, "detainer" means a warrant, teletype, or written correspondence from a law enforcement or correctional agency citing a misdemeanor or felony charge or conviction in that jurisdiction that results from criminal activity that occurred during the current period of parole or postrelease supervision.

(b) Each supervised offender who is serving only a determinate sentence and who meets all of the following conditions shall be eligible to waive the final revocation hearing before the board:

(1) The offender is not charged with a condition violation alleging conviction of a new crime.

(2) The offender is not the subject of any pending criminal misdemeanor charge, felony charge, or detainer for a misdemeanor or felony. If an offender is arrested on a new felony charge and formal criminal charges are not filed by the county or district attorney within 10 days of the offender's arrest, the offender shall be eligible to waive the final revocation hearing.

(3) The offender is detained in a Kansas correctional facility, jail, or detention center.

A supervised offender serving an indeterminate sentence shall not be permitted to waive the final revocation hearing before the board.

(c) Any eligible offender may waive the final revocation hearing at the time the statement of condition violations is served, if the eligible offender simultaneously waives the preliminary hearing on those violations provided by K.A.R. 44-9-105. If the offender elects not to waive the preliminary hearing, the revocation proceeding shall advance to a preliminary hearing. If, after that hearing, probable cause is established in regard to at least one of the alleged condition violations, the offender shall again be afforded the opportunity to waive the final revocation hearing before the board.

(d) If, before the final revocation hearing, the board receives notice that the criminal charges or a pending detainer has been dismissed, the of-

fender shall again be given the opportunity to waive the final revocation hearing.

(e) At the time of presentation of the written waiver form by parole services staff, each offender shall be orally advised of the following:

(1) Execution of the waiver form signifies that the offender admits to guilt on all condition violations charged, unless the hearing officer specifically finds that a condition violation is not supported by probable cause.

(2) The offender waives the right to counsel and the right to present witnesses or the offender's own testimony to the board because no hearing will be held if the offender executes the waiver form.

(3) Upon receipt of the waiver form, the board may continue or revoke the offender's postrelease supervision or enter other orders as the board sees fit.

(f) Each offender shall make an election by indicating in writing upon the waiver form whether or not the offender desires to accept the offer of waiver. The waiver shall be executed in the presence of parole services staff, or the offender shall acknowledge to parole services staff the authenticity of the offender's signature upon the form, which shall then be executed by parole services staff in the capacity of witness. If the offender refuses to accept the waiver form or to execute it, the waiver shall be deemed rejected, and the revocation proceeding shall advance to the final revocation hearing before the board.

(g) Upon execution of the waiver form, the penalty period of incarceration prescribed by K.S.A. 75-5217(b) and amendments thereto shall begin, unless the board continues the offender's post-release supervision. If a waiver is executed under circumstances described in subsection (d) of this regulation, the penalty period of incarceration shall begin on the date the criminal charge or pending detainer was dismissed. If an offender is detained on the basis of a felony arrest for which no formal charges are filed within a 10-day time frame, the penalty period of incarceration shall begin on the date the waiver is signed by the offender or an earlier date determined by the board, which shall not precede the date on which that felony arrest warrant was issued.

(h) Each offender who is serving only a determinate sentence and who either was supervised in a foreign jurisdiction under terms of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 and amendments thereto, or was

apprehended in another state after absconding from Kansas supervision shall be afforded the opportunity to waive the final revocation hearing as provided in subsection (c). This opportunity shall be afforded upon the offender's return to a Kansas correctional facility. Presentation of the waiver form, the formalities of its execution, and the effect of the waiver shall be governed in all respects by the provisions of subsections (e), (f), and (g) above.

(i) A signed waiver of a final revocation hearing shall be deemed invalid if it is discovered that the offender has been convicted of a new misdemeanor or felony that occurred during a period of postrelease supervision on the current active sentence. Under these circumstances, the offender shall be docketed for a hearing before the board.

(j)(1) An offender shall not rescind a written waiver of final revocation hearing that is before the board unless the offender petitions the board, in writing and in the form that the board may direct, and proves any of the following to the satisfaction of the board:

(A) The offender was under duress at the time of execution of the waiver form.

(B) The offender's execution of the waiver form was procured through fraud.

(C) The offender was not advised that execution of the waiver form constitutes admission of guilt of the charged condition violation or violations.

(D) The offender was not advised of the rights that the offender would forego by execution of the waiver form.

The petition for rescission shall be submitted to the board postmarked by a date no later than 14 calendar days after the date of the allegedly defective waiver.

(2) If the board grants the offender's petition, the charge of any condition violation shall be rescheduled for a preliminary hearing or a final revocation hearing, as applicable. If postrelease supervision is revoked by the board at the final hearing and the offender is ordered to serve an incarceration penalty period, this penalty period shall begin on the date of the revocation. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002.)

Article 600.—CONDITIONAL RELEASE

45-600-1. General provisions. (a) Each inmate who has served the maximum sentence,

less all projected good time credits and subject to adjustment for any forfeiture of good time credits, shall be placed on conditional release.

(b) Each offender on conditional release status shall be placed under parole supervision in the same manner as that for other parolees and shall be subject to the same terms and conditions as those for other parolees. If the parole officer establishes probable cause that an offender has violated the conditions of conditional release, the offender may be returned to confinement, subject to the opportunity for a final revocation hearing and to an order of the board, which shall be considered in the same manner as that for a parole violator. The offender shall have the same rights at the final revocation hearing as those of a parolee under K.A.R. 45-500-2.

(c) Each parolee who achieves conditional release status while on parole shall continue under supervision of the parolee's parole officer. The conditions of parole shall not be changed by the fact that the parolee reached conditional release status. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 2001 Supp. 22-3718, and 75-5217; effective Nov. 22, 2002.)

Article 700.—RELEASE OF FUNCTIONALLY INCAPACITATED INMATES

45-700-1. Application for release. (a) If the secretary believes that an inmate is functionally incapacitated, an application for release may be submitted to the board by the secretary. The application shall be accompanied by documentation attesting to and describing the inmate's functional incapacity. This documentation shall be prepared by a medical doctor and, as needed, by a mental health professional. The documentation shall include a comprehensive description of the inmate's condition and prognosis.

(b) For the purposes of this article, "functional incapacitation" means that an inmate has a condition caused by injury, disease, or illness, including dementia, that is determined, to a reasonable degree of medical certainty, to permanently render the inmate physically or mentally incapacitated to the extent that the inmate lacks effective capacity to cause physical harm.

(c) The application shall include a release plan,

which shall provide details about where the inmate will reside and shall identify all treatment providers and facilities to be used by the inmate. Before the inmate's release, this release plan shall be subject to review and approval by department of corrections (DOC) staff in the same manner as any other release plan.

(d) All medical and treatment records pertaining to the inmate shall be available for review by the board, upon its request. If deemed necessary by the board, a second medical opinion may be requested. (Authorized by and implementing L. 2002, Ch. 57, Sec. 1; effective, T-45-7-26-02, July 26, 2002; effective Nov. 22, 2002.)

45-700-2. Review and consideration of application for release. (a) On receipt of the secretary's application for release of a functionally incapacitated inmate, a member of the board shall review the application and, with assistance from DOC staff, shall ensure that the following steps are taken:

(1) The written notification of the application provided by the secretary to each prosecuting attorney and the judge of each court in which the inmate was convicted shall include confidential copies of each medical or mental health report documenting the incapacitating condition. The confidentiality of these reports shall be maintained.

(2) The written notification of the application provided by the secretary to each victim or, if any victim is deceased, to one or more members of the victim's family with known addresses shall not include any of the confidential medical or mental health reports documenting the incapacitating condition. However, a general description of the inmate's incapacity shall be included in the written notification.

(b)(1) At the discretion of the board member reviewing the application, the final decision on the application may be entered with or without a formal hearing after considering all available information, including the following:

(A) The documentation required by subsection (a) of K.A.R. 45-700-1;

(B) any comments received from any prosecuting attorney, judge, crime victim, or member of the victim's family; and

(C) the factors identified in paragraph (a)(8) of L. 2002, Ch. 57, Sec. 1, and amendments thereto, and the following additional factors:

(i) The inmate's age and medical condition;

- (ii) the health care needs of the inmate;
- (iii) the inmate's custody classification and level of risk of violence; and
- (iv) the inmate's effective capacity to cause physical harm.

An inmate's need for long-term care may be considered in reaching a determination that an inmate has a functional incapacitation, but shall not be determinative in itself.

(2) If a hearing is scheduled, additional information or evidence may be requested from any of the medical or mental health providers who prepared reports for the application, or from any other person or persons having relevant information or knowledge.

(c) If the board finds that the inmate is functionally incapacitated and does not represent a risk to public safety, the release of the inmate may be ordered by the board under the terms of the approved release plan and any additional terms and conditions of release deemed necessary by the board, subject to the following voting requirements:

(1) The statutory requirements for voting to parole inmates sentenced for a class A or class B felony or for off-grid crimes committed on or after July 1, 1993; and

(2) a vote to release the inmate by a majority of the members of the board under either of the following circumstances:

(A) The inmate is serving a sentence for a severity level 1, 2, or 3 felony on the sentencing guidelines grid for non-drug crimes.

(B) A formal hearing regarding the application for release, with the inmate present, has not been held. (Authorized by and implementing L. 2002, Ch. 57, Sec. 1; effective, T-45-7-26-02, July 26, 2002; effective Nov. 22, 2002.)

Article 800.—DISCHARGE

45-800-1. General provisions. (a) Each offender on release status who meets at least one of the following conditions shall be discharged from supervision:

(1) The offender has served the maximum term or sentence as determined by K.S.A. 22-3722 and amendments thereto.

(2) Discharge is recommended by the parole officer and approved by the board as provided in K.S.A. 22-3722 and amendments thereto.

(b) A final order of discharge also may be generated by the board on its own initiative, as pro-

vided in K.S.A. 22-3722 and amendments thereto, if the board is satisfied that final release is not incompatible with the best interests of society and the welfare of the offender. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; implementing K.S.A. 22-3722; effective Nov. 22, 2002.)

Article 900.—EXECUTIVE CLEMENCY

45-900-1. Procedures. (a) Each inmate who desires to apply to the governor for executive clemency shall make the request to a facility representative designated by the warden.

(b) The applicant shall prepare, on forms furnished by the board, a written statement of the reasons for requesting clemency and shall complete all additional information requested on the forms. The applicant shall return the completed application to the facility representative. If the applicant prefers not to disclose the reasons for the request to facility officials, the forms may be sent, in a sealed envelope, directly to the board.

(c) The review by the board shall include an examination of pertinent records, reports, and other information that may be available, and a personal interview with the applicant, if requested by the board.

(d) Any person who has been convicted of a crime in any court of this state, but who is not in confinement, may apply for executive clemency by making application to the board. On request, the instructions and the form needed to initiate the application shall be provided to that person by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3701; effective Nov. 22, 2002.)

Article 1000.—ORDERS OF RESTITUTION AND EXPENSES

45-1000-1. Restitution. As a condition of parole or postrelease supervision, any inmate may be ordered by the board to pay restitution in the amount and manner provided in the journal entry of the sentencing court.

If at any time before issuing a certificate of discharge under K.S.A. 22-3722 and amendments thereto the board finds any compelling circumstance that would render a plan of restitution unworkable as provided in K.S.A. 22-3717(n) and amendments thereto, notice of the board's finding shall be given to the court that sentenced the inmate. (Authorized by and implementing K.S.A.

2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-1000-2. Transportation expenses. If transportation expenses are incurred as a result of returning any parolee or offender on postrelease supervision to this state to answer criminal charges, or a probation, parole, or conditional release violation warrant, the agency or department that has incurred these expenses may submit a statement of the expenses to the board before the final revocation hearing or before the initial parole hearing. If the board finds that the statement of expenses is reasonable and necessary, the parolee or offender may be ordered by the board to pay that amount as a condition of parole or postrelease supervision. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-1000-3. Manner of payments. If payments have been ordered as a condition of parole, the parole officer may monitor the payments in the same manner as that for any other condition of parole. If a change of circumstances makes payments according to the established schedule unworkable, the parole officer may change the schedule as long as the adjusted schedule still makes it possible for the offender to make all payments before the inmate's discharge. If compelling circumstances develop that render the plan of reparation and the schedule of payment unworkable, the parolee may apply to the board to be released from the payment order. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)